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Attorneys for Plaintiff, NextGear Capital, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

NEXTGEAR CAPITAL, INC.,

Plaintiff,

v.

ANTONIO L. GUTIERREZ; PAUL
GUTIERREZ,

Defendants.

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CIVIL ACTION

CASE NO.: 3:18-cv-01617

(Judge Mannion)

ELECTRONICALLY FILED

**DECLARATION OF NICHOLAS M.
GAUNCE, ESQ.**

I, Nicholas M. Gaunce, Esq., of full age, hereby declare:

1. I am an attorney-at-law of the State of New Jersey and the Commonwealth of Pennsylvania, along with being admitted to the bar of the above court. I am also an associate of the law firm of Eckert Seamans Cherin & Mellott, LLC, attorneys for the plaintiff, NextGear Capital, Inc. ("NextGear"). I have worked as co-counsel in regards to NextGear's claims against defendant, Antonio Gutierrez, Luxury Haus, Inc. ("LHI"), Edith Gutierrez, and now Paul Gutierrez. I make this declaration based upon personal knowledge and in opposition to the motion to dismiss filed by Paul Gutierrez.

2. Attached as Exhibit “A” are copies of document subpoenas my office served upon PNC Bank and TD Bank following the deposition of Paul Gutierrez in the New Jersey Action.¹

3. We received a no-records response to the subpoenas attached as Exhibit “A” on or about April 26, 2017.

4. On March 30, 2018, I sent a second subpoena to TD Bank seeking records related to funds received by Paul Gutierrez from LHI.

5. I was prompted to serve a second document subpoena upon TD Bank because the document production made by another financial institution of LHI, Freedom Bank, in late January of this year confirmed that accounts in favor of Paul Gutierrez existed at TD Bank at one point. The wire information confirming this fact was attached as an exhibit to the second subpoena I served upon TD Bank. This wire confirmation was one page in a document production spanning several thousand pages by Freedom Bank in reference to multiple accounts. A copy of the second subpoena I served is attached as Exhibit “B.”

6. I received a response to the second subpoena directed to TD Bank on April 25, 2018. A copy of a letter received from TD Bank dated April 24, 2018 confirming overnight delivery is attached as Exhibit “C.” This document production from TD Bank contained the records that are attached as Exhibit G to NextGear’s complaint pending before this Court.

7. Six days prior, on April 19, 2018, I attended the first of several settlement conferences concerning NextGear’s claims against Antonio Gutierrez, LHI, and Edith Gutierrez in the New Jersey Action. A copy of the Court’s notice in regards to the first settlement conference is attached as Exhibit “D.”

¹ The term “the New Jersey Action” shall have the same meaning here as in NextGear’s opposition brief.

8. Eventually, a settlement was reached with Edith Gutierrez, the last defendant in the New Jersey Action, on May 7, 2018. A copy of the transcript placing the parties' settlement on the record is attached as Exhibit "E."

9. Paul Gutierrez was not a party to the New Jersey Action.

10. On August 13, 2018, I filed a motion to enforce settlement in the New Jersey Action when Edith Gutierrez breached the terms of her settlement with NextGear.

11. On October 26, 2018, the court in the New Jersey Action indicated that it was reserving a decision on NextGear's application in relation to a commercial property for which NextGear was seeking the appointment of a receiver. (Exhibit H to the Declaration of Paul Gutierrez, October 26, 2018 Order for Judgment against Edith Gutierrez).

12. The court in the New Jersey Action has yet to decide this issue.

13. As counsel for NextGear, I am still investigating Paul Gutierrez's receipt of funds from LHI, including awaiting a further response to a third subpoena recently served upon TD Bank. A copy of the recent subpoena I served is attached as Exhibit "F."

14. I have yet to receive records in response to this third subpoena.

Pursuant to 28 *U.S.C.* § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

By: /s/ Nicholas M. Gaunce
Nicholas M. Gaunce

Dated: December 19, 2018